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Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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## CONSERVATION COMMISSION MEETING MINUTES

July 23, 2009

Beginning at 7:30 p.m.

City Hall, Rm 209

**Meeting opened approximately 7:38.m.**

**MEMBERS PRESENT:** I. Wallach, Chair, S. Lunin, Vice-chair, N. Richardson, and J. Hepburn (R. Matthews and D. Green arrived later-see below)

**MEMBERS ABSENT:** D. Dickson

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

**Newton Centre Playground** – Determination issued last meeting. Parks & Recreation asks to increase scope with minimal impact to resource areas and without re-filing.

**Report:** Carol Schein, Parks & Recreation, Maria Rose, Engineering, and Kathleen Cahill, Planning, were present to describe the additional work. A portion of the work proposed for this project was left out of the RDA- to re-pave a section of existing non-accessible walkway that crosses Hammond Brook just beyond where it enters a culvert. It is within the 100 ft buffer to bank, but not in riverfront (see plan). Erosion and sediment control is needed near the culvert to prevent any disturbed material or asphalt from entering the perennial stream (silt sox recommended), but it does not increase paved surface, nor have any other impact, as it is a repair to an existing structure. If it were a new (separate) RDA, it would not be in any resource area and would be a negative determination on the work w/use of erosion and sediment control.

**Meeting:** Carol Schein, Parks and Recreation and Kathleen Cahill, Planning, came to explain how this work fits into the Master Plan for the Park and will only be performed if there is enough money after the accessible part of the path is completed. Engineering and Environmental Planner recommended use of silt sox at east side of bridge to protect tree roots – that can be added to the plan by hand.

**Motion by S. Lunin to approve as administrative substitution and not require filing. Second by N. Richardson. Vote: All in favor. Motion passed.**

R. Matthews arrived 7:42 p.m., D. Green arrived 7:45 p.m.

**46 Heatherland NOI** – Owner submitted RDA for fence, then it was determined that the addition being upgraded (with no permit from ISD) was originally built several years ago in flood zone w/no permit from Conservation. Owner agreed to file after-the-fact NOI for addition and fence in flood zone and provide compensatory storage for both.

**Report:** The resource area is Newton flood zone. A site visit was conducted, and engineering agreed the compensatory storage being offered is sufficient. An Order with standard conditions would protect the wetland resource area, although there is no need for erosion and sediment control measures if all soil to be removed for compensatory storage is removed from the site immediately after excavation. Also, owner should be informed that dumpsters are not allowed in flood zone areas.

### Conservation Commission

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**Meeting:** Florin Luca, owner appeared and described the proposed work. He said the addition was built by the previous owner. This is an “after-the-fact” filing for the addition under the Watershed/Floodzone Ordinance and a request for a new fence under the WPA and the City’s ordinance. Mr. Luca said he submitted a plan for compensatory storage but he now does not want to provide compensatory storage. He is doing all the work on the property himself, and has had a dumpster on the property for over a year. Neighbor Jeff Kaczinski submitted a letter and photographs and said Mr. Luca has placed fill and Mr. Kaczinski is concerned that creation of compensatory storage on Mr. Luca’s property will cause more flooding on his (Mr. Kaczinski’s) property. He asked if Mr. Luca’s proposed fence would impede the movement of stormwater. The Environmental Planner said that surrounding properties are negatively affected by construction of the addition in the past without a permit from Conservation and with no compensatory storage.

**Motion by D. Green for OOC with standard conditions plus compensatory storage for addition and fence and space for water to flow under fence. Second by R. Matthews, with amendment, to remove dumpster from present position and store in driveway, then must be removed entirely from property by October 30<sup>th</sup>. If not removed at that time, owner may be subject to enforcement. Vote: All approved. Motion passed.**

**Houghton Garden – paint violation** – Vice-Chair sent letter to B.C. students in response to last communication. Students have been out of the country but have promised to provide offer of mitigation in plenty of time for packet for this meeting.

**Report:** The mitigation offer is in the packet, but there is no monthly clean-up of Houghton Garden that I am aware of (for the students to help with), and the community service hour requirement is another BC requirement, I believe. I will be trying to set up a meeting with the students before they meet with Conservation to expand on the proposal.

**Meeting:** Amy Hollis and Ben Weil appeared and said they like the idea of spreading wood chips on the paths at Norumbega Park, one of several suggestions Anne had made for discrete mitigation projects to make up for their violation in Houghton Garden. Norumbega really needs the chips to reduce wear and tear on the paths. They proposed to spread wood chips on 100 yards of path approximately 6 inches deep for community service.

**Motion by D. Green to accept proposed mitigation. Second by S. Lunin. Vote: All approved. Motion passed.**

**88 Selwyn RDA-** proposed deck in flood zone and 100 ft buffer zone to tributary of S. Meadow Brook with compensatory storage.

**Report:** Existing deck in flood zone and buffer zone to be replaced with deck of ~same size on existing footings. Since deck not previously approved by Conservation, owner is proposing to create compensatory storage by excavating under the deck. Minimal disturbance is expected, so can probably be done with a positive determination on the resource area (positive #1) and a negative (#3) determination on the work, with conditions that owner removes excavated soil from lot entirely, and uses silt fence for erosion and sediment control between the work and the bank.

**Meeting:** Nick Jathar of 88 Selwyn Road appeared and described the project. Mr. Jathar requested the Commission (by checking boxes 1-d) to determine whether the area is subject to the Wetlands Protection Act, whether the boundaries of the wetland are accurate, whether the work is subject to the Act, and whether the work is subject to the jurisdiction of a municipal wetlands ordinance or bylaw .



**Motion by R. Matthews to issue a positive determination for the resource area and a negative determination on the work. Second by D. Green. Vote: All in favor. Motion passed.**

**100 Boulder Road NOI** - Addition to front entryway, addition above garage, remove porch and construct addition on pier foundation and grading within the first 100 ft of riverfront and in flood zone.

**Report:** Proposed work is all within the first 100 ft of riverfront. Work on the entryway and replacement of a porch with an addition on piers will have no net increase in impervious area or change in location of impervious structures. There is no alternatives analysis. Currently, topography directs run-off to approximate center of back of lot, where large amount of vegetation is present which can filter for fertilizer and other lawn additives.

Proposed change in grade would direct run-off more directly to brook. While a line of native “plantings” is proposed along the brook, between the new direction of run-off and the brook, the current system is probably better for filtering this run-off. Roof runoff for increased roof area is to be injected into a large underground storage area in back of house. Proposed native plantings are offered along the bank of South Meadow Brook – offer of native plantings should list species, number and size and total area of plantings for future comparison. Entire lot is also in flood zone to the brook. The proposed re-grading gives the home-owner a high area in back of the house (415 cu ft of fill), which is offset by removing 707 cu ft of fill adjacent to the bank. However, I believe the proposed increase in compensatory storage area does not offset the likely negative impact of more direct flow off the lawn to the river. The CC may approve the plan as is, or with modifications, if it believes the plan does not improve the ability of the resource areas to protect the interests of prevention of pollution, prevention of flooding, protection of wildlife (that lives in the river and adjacent to it).

**Meeting:** Owners, Carmen Barnes and Amir Nashat agreed to revise plan after discussion with Environmental Planner and Leanne Salvia of Everett Brooks. New plan dated 7-22-09 submitted and reviewed, proposes to abandon proposed infiltration galley in the back yard with associated grading. Instead, the infiltration galley will be installed in the front yard and a 4 ft strip of driveway paving nearest the brook will be removed. The top of bank will be planted along the edge of the former pavement with native, indigenous woody plants. The latter should be an on-going condition.

**Motion by R. Matthews to issue an Order of Conditions with standard conditions plus on-going condition to maintain area where pavement removed and line of shrubby native plants from street to back edge of house as shown on plan. Second by S. Lunin. Vote: All in favor. Motion passed.**

**DCR Bridge Repair – Abutter Notification** – Request to set limits on abutter notification

**Report:** Please see packet. Applicant expects to file this fall for at least one pedestrian bridge (#40), and has presented what seems like a reasonable proposal to limit abutter notification to those they believe are most likely to experience an impact from increased use of the bridge following its repair.

**Meeting:** Julie Vondrak, Epsilon Associates, Inc., Greg Imbero, Simpson, Gumpertz & Heger, and Dan Driscoll, Mark Gravalles, and Mark Griffin, all from MA Department of Conservation and Recreation (DCR), were present to discuss limiting abutter notification for a future NOI filing. A number of Newton residents were also present (see attached sign-in sheet). Epsilon submitted a plan showing abutters to be notified by certified mail, that does not include all abutters within 100 ft of the property boundary for pedestrian bridge #40, which is sited on a former railroad corridor. DCR is proposing to notify by certified mail all abutters shown on plan, and to notify others who signed in/do sign in at a public meeting by regular mail. The neighborhood residents are concerned that not all residents concerned or potentially affected will be notified, with a long-enough lead time,



and they want transparency in the process of planning a proposed future path from the bridge. The Commission only has jurisdiction regarding the bridge and the riverfront area. I. Wallach asks whether DCR could notify concerned residents by telephone and DCR agreed. Alderman Sangiolo, when asked her concern, replied that the confidence level in a less formal notification process is low. DCR is aiming to file in September and would notify abutters on the same day that they file with Conservation. After further discussion, DCR agrees to add ~20 homes representing abutters along the railroad corridor as a voluntary measure (not required by the Commission). The Commission is satisfied with DCR's proposal for notification and will accept the addition of the railroad abutters to the notification when they file.

**Hemlock Gorge Right Circular Dam, right Dike** – Written report from GZA following fill of 'sinkhole'

**Report:** Following fill of sinkhole, which was done with minimal damage to surroundings, GZA has deemed the right dike in "poor" condition, an upgrade from "unsafe." However, they note that they cannot see below the waterline, which might change their evaluation. They recommend the right dike be replaced, but do not provide a time frame.

**Meeting:** No one present for DCR. The Commission had asked for a report following the repair and within six (6) months of the work. The written report (included in packets) is their report.

### **Violations --Updates**

**76 Webster Park – Habitat – utility poles in CR area** – Habitat requests to remove and put lines underground in driveway, and wants sign-off on Certificate of Occupancy –ISD issued a certificate of occupancy for one unit, and Planning personal, including the Environmental Planner agreed to a temporary CO for the other unit after a bond was posted for the cost of moving the utility poles plus estimated mitigation. Habitat is working to have all problems corrected. Nothing new as of this date.

**35 Kingswood Road** – alteration of bank of Charles – restoration area planted with 20 new lowbush blueberry bushes.

**15 Harwich Rd –Violation** –Have asked DEP to assist.

**1203&1211 Washington St.** – UPDATE: DPW is trying to schedule a training class required of their Enforcement Order, to inform city employees of how to recognize hazardous spills/substances.

**93 Andrew St.**

**3 Fuller Ave.** – **UPDATE** – Engineering Department advised me the sewer cannot be slip-lined as the CC requested, and will need a new sewer line through the wetlands. Mike Roman, contractor, called for appointment to talk with me about it, but did not make the appointment.

### **Certificates of Compliance** (\*needs action)

**\*2345 Commonwealth Avenue – Marriott Hotel** – Request for certification of true copy of COC for DEP #239-96, which was issued but never recorded.

**Report:** Planner has received a letter from a law firm requesting the CC certify a copy for recording, but the law firm has been unresponsive to the request to address the outstanding Order to close it out. I believe the structure for which the Order was requested (construction of gazebo in floodplain, and required a BOA Order to do work) was replaced by subsequent work, but the Order was recorded.

**Meeting:** I. Wallach signed a certification of a true copy for the Commission.

**\*31 Homewood Road** – As-built submitted for small addition in footprint of deck and small extension of deck within the 100 ft buffer zone to kettle pond and possible bordering vegetated wetland.



**Report:** Work has been completed with as-built plan and letter from engineer that work was performed in substantial compliance with the OOC.

**Meeting:** Motion by D. Green to issue a Certificate of Compliance. Second by R. Matthews. Vote: All approved. Motion passed.

**\*61 Verndale Road** – As-built submitted for addition and deck in flood zone.

**Report:** OOC issued for new kitchen addition and deck, realignment of sewer, injection of roof runoff and re-grading to provide slight amount of compensatory storage. During work, office foundation was found to need repair, and foundation was replaced with sono-tubes with approval from building inspector and environmental planner. As-built and compensatory storage calculations are consistent with original plan and approved changes, but you have no letter from engineer that the project is in “substantial compliance” and engineer is in hospital and unavailable. The City engineer’s observations during a site visit are consistent with the proposed work. Under the circumstances, I believe the CC can issue a Certificate of Compliance. However, owner has not reestablished a lawn and should be informed that to bring in loam he needs to remove existing soil and carefully replace with topsoil so as not to change the elevation, else he will have changed elevation by filling and created a violation.

**Meeting:** Planner reported that there is no letter from engineer that the project was completed “in substantial compliance” with the Order of Conditions. The Commission declined to issue a Certificate until it receives the letter from the engineer.

**Mason Rice Playground improvements request for COC** - OOC has expired, and there is no money for engineering services for as-built plan or letter that they are in compliance –OOC NOT recorded.

**15 Marla Circle**-mitigation plantings need to be re-planted, area documented, and MWRA easement clarified  
**1676 Commonwealth** – needs as-built plans

#### **Announcements & General Business:**

**Open Space Plan** – considerations and member to work on committee and with Conservators?

**Nahanton Woods** – Judy– report on meeting.

**June 25, 2009 Meeting Minutes** for approval

**Meeting:** Motion by S. Lunin to approve minutes from June. Second by D. Green. Vote: All in favor. Motion passed.

#### **Outstanding issues – discussion**

**Non-criminal ticketing** – update — Q: Does the Commission wish to ticket under the Watershed/Flood Zone only?

#### **Other**

Motion by D. Green to adjourn. Second by N. Richardson. Vote: All approved. Motion passed. Meeting adjourned at 10:55 p.m.

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner

Conserva\agmin\min7-23-09